IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
SUMMONS FOR JUDGMENT NO.881 OF 2004
IN
SUMMARY SUIT NO.1400 OF 2004

Tips Industries Ltd. ...Plaintiff.

V/s.

Chiragdeep International ...Defendant.

Shri Shailesh Shah i/b Daru Shah & Co. for the Plaintiff.
Shri H.N.Thakore a/w Chanda Sonpal i/b Th. Jariwala & Associates for the Defendant.

CORAM: S.U.KAMDAR,J.
DATE : 11th October, 2005.
P.C.:

1. The present Summons for Judgment is for the recovery of amount of Rs.2,52,56,000/-. The said amount arises out of written contract executed between the parties being dated 12th October, 2000 being Ex.A to the plaint. The said agreement provided rights of assignment of musical work and dialogues in the film known as 'Joshilay'. Under the terms and conditions of the said agreement, it is provided that all right in the movie in respect of songs, dialogues and musical works will be assigned to the Plaintiff for the total consideration of Rs.1,90,00,000/-. The Plaintiff has paid pursuant to the said Agreement 1 crore 30 lakhs as provided in the Clause 7 of the said agreement. Remaining amount of the instalment of 60 lakhs was due and payable on

delivery of the master tape containing all the songs and international track of the said film on or before 28th February, 2001 and balance amount of Rs.20 lakhs on release of cinematographic film in the theatre.

2. Under the clause 7(d) of the said agreement, it is interalia provided that if the producer fails to deliver master tape/original recording track on or before 28/02/2001 with a grace period of 60 days then the Plaintiff will be entitled to get refund of the amount of Rs.1 crore 30 lakhs with interest at the rate of 24% per annum by the Defendant to the Plaintiff. It is an admitted position that film 'Joshilay' has not been completed. However, it is the case of the Defendant that master tape containing songs was handed over by the Defendant to the Plaintiff. In respect of the aforesaid contention, the Defendant has no material to show that any such master tape was handed over. Even master tape sought to be produced by the Defendant today does not contain any dialogues of the said film. Thus, Defendant is liable to make refund of the said amount with interest as aforesaid. In that view of the matter, there is no defence in the present Suit. The Defendant is not in a position to give master tape containing dialogues nor any evidence is being produced to show that the Defendant has given master tape containing songs. In the aforesaid circumstances of the matter, I am

of the opinion that Defendant is liable to make payment of aforesaid amount of Rs.1 crore 30 lakhs with the interest at the rate of 24% per annum as contained in clause 7(d) of the said agreement. However, with a view to give opportunity to the Defendant to defend the Suit, Defendant is directed to deposit a sum of Rs.2 crores 50 lakhs within a period of four weeks, failing which Plaintiff will be entitled to get decree. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court.

3. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.

(S.U.KAMDAR,J.)